

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this correspondence for Application No. 09/558,329 is being electronically transmitted via EFS-WEB, on September 4, 2007.

/kurt l. grossman/

September 4, 2007

Kurt L. Grossman  
Reg. No. 29,799

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**Ex parte Stern**

**Appeal No. \_\_\_\_\_**

Serial No.: 09/558,329  
Filed: April 25, 2000  
Group Art Unit: 1711  
Examiner: Cheryl Juska  
Applicant: Randolph A. Stern and Michael N. Byles  
Title: Stitch Bonded Fabric and Fluid-Retaining Fabric Made Therewith  
Attorney Docket: STAN-09RE  
Conf. No.: 9722

Mail Stop APPEAL BRIEF-PATENTS  
Commissioner for Patents

P. O. Box 1450  
Alexandria, VA 22313-1450

September 4, 2007

Dear Sir or Madam:

**AMENDED APPEAL BRIEF**

This Amended Appeal Brief is submitted in response to the Notification of Non-Compliant Appeal Brief mailed on June 1, 2007.

## Table of Contents

I.	Real Party In Interest.....	1
II.	Related Appeals and Interferences.....	2
III.	Status of Claims.....	3
IV.	Status of Amendments.....	4
V.	Summary of Claimed Subject Matter.....	5
VI.	Ground(s) of Rejection to Be Reviewed on Appeal .....	11
VII.	Argument .....	13
	A. Examiner is Unlawfully Ignoring the Words of the Claim .....	16
	B. Examiner Refuses to Consider the Real Meaning of "Felt" .....	22
	C. The Cited Art Neither Discloses nor Renders Obvious the Claimed Invention.....	24
	1. Overview.....	24
	2. The Cited Art Does Not Anticipate the Claimed Inventions .....	25
	a. Claim improperly rejected under 35 U.S.C. § 102(b) as anticipated by Stemlib .....	26
	b. Claims improperly rejected under 35 U.S.C. § 102(b) as anticipated by Lefkowitz .....	27
	c. Claims improperly rejected under 35 U.S.C. § 102(b) as anticipated by Ott....	28
	d. Claims improperly rejected under 35 U.S.C. § 102(b) as anticipated by Gillies.. .....	29
	3. The Cited Art Does Not Render Obvious the Claimed Inventions.....	29

a.	Claims improperly rejected under 35 U.S.C. § 103(a) over Gillies in view of Ott .....	30
b.	Claims improperly rejected under 35 U.S.C. § 103(a) over Kyles in view of Gillies, Ott and/or Sternlieb .....	31
VIII.	Claims Appendix.....	34
IX.	Evidence Appendix.....	50
X.	Related Proceedings Appendix .....	51

**I.      Real Party in Interest**

The real party in interest is Standard Textile Co., Inc., a corporation of the State of Alabama, which is the Assignee of the present invention.

## **II. Related Appeals and Interferences**

With the possible exception of prior Appeal No. 2005-0019 in this application, there are no related appeals or interferences known to the Appellant or the Appellants' legal representative that will directly affect, or be directly affected by, or have a bearing on the decision of the Board in the present appeal. For sake of completeness, Appellants advise that this reissue application was before this Board in Appeal No. 2005-0019, in which the Board reversed the Section 112 rejections (applicable only to claims 30-87 added in the reissue) but, focusing then on the term "yarn face" in all of the claims, affirmed the Section 103 rejections of all claims and the Section 102 rejections applicable to many of the claims due to the alleged breadth of that term. *See* this Board's Decision on Appeal mailed January 19, 2005, a copy of which is attached in the Related Proceedings Appendix. The claims now before this Board have been amended to more particularly specify aspects of the "yarn face" in relation to the "felt" directly in the claims such that this appeal raises new issues.

### **III. Status of Claims**

Claims 1-87 are rejected. Claims 1-87 are currently pending and are subject to this appeal. A copy of these claims is included herein in the Claims Appendix.

**IV. Status of Amendments**

No amendments were made to the claims after the Final Office Action on May 2, 2006.

**V. Summary of Claimed Subject Matter**

Claims 1, 12, 23, 30, 39, 51, 58, 65, 70, and 80 are independent claims.

**Independent Claim 1**

Appellant's independent claim 1 is directed to a stitch bonded facing fabric (10). *See* col. 2 lines 31-65 and Figures 1, 2, and 5 of Appellant's specification. The stitch bonded facing fabric (10) includes a first layer of hydrophobic felt (14) and a second layer of hydrophilic felt (16) adjacent to the first layer (14) so as to define a felt web (12) having an upper surface (20) defined by an upper side of the first layer and a lower surface (22) defined by a lower side of the second layer. A plurality of stitch bonding yarns (18) repeatedly extends through the felt web (12). The yarn segments (18', 18'') extend across both the upper (20) and lower surfaces (22) of the felt web (12) such that the yarn segments (18') extending across the felt web (12) upper surface (20) cooperate to form a top yarn face (24) above the felt web (12) upper surface (20) and the yarn segments (18'') extending across the felt web (12) lower surface (22) cooperate to form a bottom yarn face (26) below the felt web (12) lower surface (22). Each yarn face (24, 26) is effectively continuous such that the corresponding web surface (20, 22) is not generally exposed at the associated yarn face (24, 26). *See* col. 2 lines 59-63.

**Independent Claim 12**

Appellant's independent claim 12 is directed to a stitch bonded facing fabric (10). *See* col. 2 lines 31-65 and Figures 1, 2, and 5 of Appellant's specification. The stitch bonded fabric (10) includes a felt web (12) having a hydrophobic upper aspect (14) extending from an upper surface (20) of the web (12) and a hydrophilic lower aspect (16) extending from a lower surface (22) of the web (12). A plurality of stitch bonding yarns (18) repeatedly extends through the felt web (12)

with yarn segments (18) extending across both the upper (20) and lower (20) surfaces of the felt web (12). The yarn segments (18') extending across the felt web (12) upper surface (22) cooperate to form a top yarn face (24) above the felt web (12) upper surface (20). The yarn segments (18'') extending across the felt web (12) lower surface (22) cooperate to form a bottom yarn face (26) below the felt web (12) lower surface (22). Each yarn face (24, 26) is effectively continuous such that the corresponding web surface (20, 22) is not generally exposed at the associated yarn face (24, 26). *See col. 2 lines 59-63.*

**Independent Claim 23**

Appellant's independent claim 23 is directed to a fluid retaining fabric. *See col. 3 lines 20-35 and Figures 6 and 7 of Appellant's specification.* The fluid retaining fabric includes a stitch bonded facing fabric (10) having a first layer of hydrophobic felt (14), a second layer of hydrophilic felt (16) being adjacent to the first layer so as to define a felt web (12) having an upper surface (20) defined by an upper side of the first layer (14) and a lower surface (22) defined by a lower side of the second layer (16). A plurality of stitch bonding yarns (18) repeatedly extend through the felt web (12) with yarn segments (18', 18'') extending across both the upper (20) and lower (22) surfaces of the felt web (12). The yarn segments (18') extending across the felt web (12) upper surface (20) cooperate to form a top yarn face (24) above the felt web (12) upper surface (20). The yarn segments (18'') extending across the felt web (12) lower surface (22) cooperate to form a bottom yarn face (26) below the felt web (12) lower surface (22). Each yarn face (24, 26) is effectively continuous such that the corresponding web surface (20, 22) is not generally exposed at the associated yarn face (24, 26). *See col. 2 lines 59-63.* A barrier layer (40) is attached to the bottom yarn face (26).

### **Independent Claim 30**

Appellant's independent claim 30 is directed to a stitch bonded facing fabric (10).

*See col. 2 lines 31-65 and Figures 1, 2, and 5 of Appellant's specification.* The stitch bonded facing fabric (10) includes a felt web (12) having an upper surface (20) and a lower surface (22). The stitch bonded fabric (10) has a plurality of stitch bonding yarns (18) repeatedly extending through the felt web (12) with yarn segments (18', 18'') extending across both the upper (20) and lower (22) surfaces of the felt web (12). The yarn segments (18') extending across the felt web (12) upper surface (20) cooperate to form a top yarn face (24) above the felt web (12) upper surface (20). The yarn segments (18'') extending across the felt web (12) lower surface (22) cooperate to form a bottom yarn face (26) below the felt web (12) lower surface (22). Each yarn face (24, 26) is effectively continuous such that the corresponding web surface (20, 22) is not generally exposed at the associated yarn face (24, 26). *See col. 2 lines 59-63.*

### **Independent Claim 39**

Appellant's independent claim 39 is directed to an incontinent pad. *See col. 3 lines 23-26 and Figures 6 and 7 of Appellant's specification.* The incontinent pad includes a stitch bonded facing fabric (10) having a felt web (12) having an upper surface (20) and a lower surface (22). A plurality of stitch bonding yarns (18) repeatedly extend through the felt web with yarn segments (18', 18'') extending across both the upper (20) and lower (22) surfaces of the felt web (12). The yarn segments (18') extending across the felt web (12) upper surface (20) cooperate to form a top yarn face (24) above the felt web (12) upper surface (20). The yarn segments (18'') extending across the felt web (12) lower surface (22) cooperate to form a bottom yarn face (26) below the felt web (12) lower surface (22). Each yarn face (24, 26) is effectively continuous such that the corresponding

web surface (20, 22) is not generally exposed at the associated yarn face (24, 26). *See* col. 2 lines 59-63. A barrier layer (40) is joined to the facing fabric (10) so as to confront the bottom yarn face (26) of the facing fabric (10).

**Independent Claim 51**

Appellant's independent claim 51 is directed to a fluid retaining fabric. *See* col. 3 lines 20-35. The fluid retaining fabric includes a felt web (12) having an upper surface (20) and a lower surface (22). The felt web (12) is adapted to retain fluid. *See* col. 3 lines 20-23. A plurality of stitch bonding yarns (18) repeatedly extend through the felt web (12) with yarn segments (18', 18'') extending across both the upper (20) and lower (22) surfaces of the felt web (12). The yarn segments (18') extending across the felt web (12) upper surface (20) cooperate to form a top yarn face (24) above the felt web (12) upper surface (20). The yarn segments (18'') extending across the felt web (12) lower surface (22) cooperate to form a bottom yarn face (26) below the felt web (12) lower surface (22). The stitch bonding yarns (18) are hydrophobic to assist in wicking fluid into the felt web (12). *See* col. 3 lines 8-10. Each yarn face (24, 26) is effectively continuous such that the corresponding web surface (20, 22) is not generally exposed at the associated yarn face (24, 26). *See* col. 2 lines 59-63.

**Independent Claim 58**

Appellant's independent claim 58 is directed to a stitch bonded facing fabric (10). The stitch bonded facing fabric (10) includes a first layer of felt (14) having hydrophobic properties and further having an outer surface (20). A plurality of stitch bonding yarns (18) repeatedly extend through the first layer of felt (14) with yarn segments (18') extending across the outer surface (20) of the layer of felt (14), such that the yarn segments extending across the felt layer (14) outer surface

(20) cooperate to form a yarn face (24) above the felt layer (14) outer surface (20). The yarn face (24) is effectively continuous such that the outer surface (20) of the layer of felt (14) is not generally exposed at the yarn face (24).

**Independent Claim 65**

Appellant's independent claim 65 is directed to a stitch bonded facing fabric (10). The stitch bonded facing fabric (10) includes a first layer of felt (16) having hydrophilic properties and further having an outer surface (22) and a plurality of stitch bonding yarns (18). The stitch bonding yarns (18) repeatedly extend through the first layer of felt (16) with yarn segments (18") extending across the outer surface (22) of the layer of felt (16), such that the yarn segments (18") extending across the felt layer (16) outer surface (22) cooperate to form a yarn face (26) above the felt layer (16) outer surface (26). The yarn face (26) is effectively continuous such that the outer surface (22) of the layer of felt (16) is not generally exposed at the yarn face (26).

**Independent Claim 70**

Appellant's independent claim 70 is directed to an incontinent pad. *See col. 3 lines 23-26 and Figures 6 and 7 of Appellant's specification.* The incontinent pad includes a facing fabric (10) including a first layer of felt (14) having hydrophobic properties and further having an outer surface (20), and a plurality of stitch bonding yarns (18) repeatedly extending through the first layer of felt (14) with yarn segments (18') extending across the outer surface (20) of the layer of felt (14). The yarn segments (18') extending across the felt layer (14) outer surface (20) cooperate to form a yarn face (24) above the felt layer (14) outer surface (20). The yarn face (24) is effectively continuous such that the outer surface (20) of the felt layer (14) is not generally exposed at the yarn face (24). A barrier layer (40) is joined to the facing fabric (10).

**Independent Claim 80**

Appellant's independent claim 80 is directed to an incontinent pad. *See col. 3 lines 23-26 and Figures 6 and 7 of Appellant's specification.* The incontinent pad includes a facing fabric (10) including a first layer of felt (16) having hydrophilic properties and further having an outer surface (22), and a plurality of stitch bonding yarns (18) repeatedly extending through the first layer of felt (16) with yarn segments (18") extending across the outer surface (22) of the layer of felt (16). The yarn segments (18") extending across the felt layer (16) outer surface (22) cooperate to form a yarn face (26) above the felt layer (16) outer surface (22). The yarn face (26) is effectively continuous such that the outer surface (22) of the layer of felt (16) is not generally exposed at the yarn face (26). A barrier layer (40) is joined to the facing fabric (10).

**VI. Ground(s) of Rejection to be Reviewed on Appeal**

1. The rejection of claims 65 and 67-69 under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 4,025,129 to Sternlieb (hereinafter Sternlieb).

2. The rejection of claims 30-37 and 51-64 under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 4,181,514 to Lefkowitz (hereinafter Lefkowitz).

3. The rejection of claims 1, 3-9, 12, 14-20, 30, 32-38, 51, 53-56, 58, 61-66, 68, and 69 under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 4,675,226 to Ott (hereinafter Ott).

4. The rejection of claims 30, 32-36, 39, 41, 42, 46-51, 53-56, 65, 68, 69, 80, 83, 84, 86, and 87 under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 5,356,402 to Gillies (hereinafter Gillies).

5. The rejection of claims 2, 10, 11, 13, 21, 22, 31, 52, 57, 60, and 67 under 35 U.S.C. 103(a) as allegedly unpatentable over Ott

6. The rejection of claims 1, 3-12, 14-23, 26-29, 37, 38, 43, 57, 58, 61-64, 66, 70, 71, 73, 74, 76-79, and 81 under 35 U.S.C. 103(a) as allegedly unpatentable over Gillies in view of Ott.

7. The rejection of claim 25 under 35 U.S.C. 103(a) as allegedly unpatentable over Gillies in view of Ott and in further view of Lefkowitz and U.S. Patent No. 4,128,686 to Kyle (hereinafter Kyle).

8. The rejection of claims 40 and 82 under 35 U.S.C. 103(a) as allegedly unpatentable over Gillies in view of European Patent 261,904 to Taylor (hereinafter Taylor)

9. The rejection of claims 24 and 72 under 35 U.S.C. 103(a) as allegedly unpatentable over Gillies in view of Ott and Taylor.

10. The rejection of claims 31, 44, 45, 52, 67, and 85 under 35 U.S.C. 103(a) as allegedly unpatentable over Gillies in view of Sternlieb.

11. The rejection of claims 2, 13, 59, 60, and 75 under 35 U.S.C. 103(a) as allegedly unpatentable over Gillies in view of Ott and Sternlieb.

12. The rejection of claims 1-87 under 35 U.S.C. 103(a) as allegedly unpatentable over Kyle in view of Gillies, Ott and/or Sternlieb.

## **VII. Argument**

The present re-issue application was filed with claims 1-29 being maintained from the Stern patent and broader claims 30-87 being added. The invention of claims 1-29 is directed to a stitch-bonded facing fabric, an incontinent pad and/or a fluid retaining product in which a felt has hydrophilic and hydrophobic layers or properties; however, whether the felt has only one or both of hydrophobic and hydrophilic properties was deemed not to be critical or essential to the basic invention of a stitch-bonded facing fabric. As a consequence, new claims 30-87 were filed focusing on the concept of yarns stitch bonded to a felt in such a manner as to create at least one yarn face. That concept is present in all of claims 1-87, but with the feature that the felt have both hydrophobic and hydrophilic properties being required only in the original claims. The greater breadth of claims 30-87 was the basis for the Section 112 rejections previously reversed by this Board, and no longer at issue.

In that regard, added claims 30-87 were previously rejected under 35 U.S.C. § 112, first paragraph, as being allegedly based upon a disclosure which was not enabling, while all of the claims, i.e., claims 1-87, were rejected over the aforementioned prior art. Such prior art rejections focused on Examiner's broad interpretation of the term "yarn face" in the claims. The enablement rejection was based solely on Examiner's assertion that the hydrophobic/hydrophilic properties of the web were critical and since they were not cited in the newly-presented claims, enablement was lacking. The enablement rejection was reversed by this Board, although the prior art rejections were upheld based on a broad interpretation of the term "yarn face" which, at the time, did not expressly set forth the interrelationship to the felt as now recited in the claims. Decision on Appeal mailed January 19, 2005 (Appeal No. 2005-0019).

Appellants subsequently amended each of the independent claims to further recite that the yarn face is "effectively continuous such that" the corresponding "felt" surface "is not generally exposed at the associated yarn face." As a consequence, the felt is not readily visible and/or not able to be easily touched through that yarn face. In that way, a yarn face is created that looks and feels like a soft yarn surface, rather than having the rough look and/or scratchy feel of a felt. Examiner has taken the position that these specific features of the yarn face as recited in the claims are "too subjective" and, so she asserts, can be effectively ignored. Without any basis to do so, Examiner thus unlawfully gives no weight to the very words of the claim in order to rewrite them as if they are the same as they stood in the previous Appeal. In doing so, Examiner also effectively ignores the importance of the interrelationship of the yarn face and the "felt" to thus disregard the proper meaning of that term as well. The blatant purpose of effectively ignoring the words of the claim is to, thus, improperly construe the claims as if they were as broad as they were construed in the previous appeal without the added language. Indeed, even a cursory review of the Final Official Action and its underlying non-final Action after the RCE, reveals that Examiner's entire-stated basis for the rejections is what she argued in the "Examiner's Answer" in the previous appeal. Hence, Examiner cites the same art against the claims and in the same manner, notwithstanding that the claims have been amended so as to present new, and more narrow, issues for consideration. With the words being given their due weight, Examiner's rejections cannot stand.

Prior to Examiner entering the Final Rejections now on appeal, on February 6, 2006, a Request for Reconsideration was filed in which further support for the claims as now pending

was provided by a Declaration of E. Linwood Wright ("Wright Decl.").<sup>1</sup> Mr. Wright is an expert in the textile industry, and is well-qualified to address issues regarding the stitch bonded fabric of the present invention, including the construction thereof, as well as the distinct differences between the stitch bonded fabric and the textile products in the cited art. In his Declaration, Mr. Wright explains that the specification and claims are clearly understood to provide a sufficient level of objectivity to one skilled in the art to interpret "effectively continuous" and "not generally exposed", especially in the contextual relationship of the purpose of a yarn face relative to the "felt". In addition to Mr. Wright's explanations regarding yarn face and the related terminology in the specification and in the claims, Mr. Wright also explained that Examiner's position on the further term "felt" in the claims is overly broad and inconsistent with the nature of the present invention.<sup>2</sup> Mr. Wright further explains how those terms clearly distinguish the present invention over the prior art. Examiner essentially sweeps all of that under the carpet and instead effectively ignores the very words of the claims, as well as the factually based, expert opinion of Mr. Wright.<sup>3</sup> The claims as now pending are amended, and raise new issues, including the interplay of the yarn face with the felt, such that the latter is also clearly at issue.

---

<sup>1</sup> A copy of the Wright Decl. as filed February 6, 2006, is attached hereto in the Evidence Appendix as Exhibit A. A Supplemental Declaration of E. Linwood Wright (copy attached in the Evidence Appendix as Exhibit B) was filed on February 24, 2006 to make of record Mr. Wright's compensation and that he prepared a declaration for the same assignee in another matter.

<sup>2</sup> Mr. Wright explains in Paragraph 12 of the Wright Decl. that the ordinary and customary meaning of "felt [is] . . . a nonwoven sheet of matted material . . . such matted material has structural integrity, i.e. tensile strength, in all directions".

<sup>3</sup> In the previous appeal, the focus was on the term "yarn face" as it was potentially dispositive of all issues in view of Examiner's prior, and later recanted, indication of favorable consideration of the claims upon amendment to include the additional language further clearly defining "yarn face" as has now been done. Examiner seeks to preclude consideration of the "felt" issue without any basis to do so. As this appeal presents new issues in view of the amended claims, there is no rationale or reason to preclude consideration of all issues presented for patentability to the Examiner.

As will be explained in detail below, when the words of the claims are given their due meaning, rather than being effectively ignored, the rejections fail because each item of art cited by Examiner fails to disclose a yarn face that "is effectively continuous such that" the corresponding "felt" surface "is not generally exposed" thereat. Without such disclosure, the rejections are without support and must be reversed.

#### A. Examiner is Unlawfully Ignoring the Words of the Claim

In the Final Office Action dated May 2, 2006, Examiner maintains that the added claim language, i.e., that the yarn face "is effectively continuous such that" the "felt" surface "is not generally exposed", is too subjective to be relied upon for distinguishing the present invention from the prior art. Not so. The positive recitation of those features in the claim requires that the Examiner properly construe and consider those terms rather than dismiss them as she seeks to do here. Each element in a claim is deemed material to defining the scope of the invention and cannot be effectively ignored. *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 117 S. Ct. 1040, 41 USPQ2d 1865, 1871 (1997); *See also Lemelson v. United States*, 752 F.2d 1538, 1551, 224 USPQ 2d 524, 533 (Fed. Cir. 1987) (it is well settled that each element of a claim is material and essential). It also well established that mathematical precision is not required to reasonably convey the claimed subject matter to those of ordinary skill in the art and to distinguish the claimed subject matter from the prior art. Rather, relative terms as used here have long been accepted in patent examination and upheld by the courts. *See Ecolab, Inc. v. Enirochem, Inc.*, 264 F.3d 1358, 1367, 60 USPQ2d 1173 (Fed. Cir. 2001) (quoting *Pall Corp. v. Micron Separations, Inc.*, 66 F.3d 1211, 1217, 36 USPQ2d 1225 (Fed. Cir. 1995)). Here, terms

such as "effectively" and "generally" are sufficient in the context of the present invention to guide one of ordinary skill in the art to understand the metes and bounds of the invention. Thus, Examiner was required (and is always required) to consider all positive limitations recited in the claim. The failure to do so is error that undermines the rejections.

In addition, Examiner asserts, without providing lawful support, that Appellants have conceded to an unduly broad definition of "felt" for not challenging that definition before the previous appeal. That is not the law,<sup>4</sup> and indeed, during prosecution after this Board's prior decision, the amendments to the claims and arguments to the Examiner squarely put the term in issue. Examiner's goal is to blatantly ignore the words of the claims in order to make it look as though the claims as amended are still the claims prior to being amended. In that way, Examiner seeks to get away with re-applying the same art and with the same rejections that this Board previously affirmed. But this Board also held that the claims as pending during the prior appeal were not limited to the yarn face being "effectively continuous such that" the "felt" surface was "not generally exposed" because those words were not in the claims either expressly or through definition of the term "yarn face". They are now. Examiner thus cannot have it both ways, by successfully arguing for a broad construction in the previous appeal to reach the prior art because certain features were not there, and then turning around and effectively ignoring those same features once expressly recited in the claims.

The focus is on the phrase now expressly set forth in the claim that the yarn face "is effectively continuous such that" the "felt" surface "is not generally exposed" at the yarn face.

---

<sup>4</sup> See *Abbott Laboratories v. TorPharm Inc.*, 300 F.3d 1367, 63 USPQ2d 1929, 1936 (Fed. Cir. 2002) (an application is to be reviewed on its merits, with all issues open for consideration notwithstanding a prior, adverse Board decision). The present situation is ever more compelling as the interrelationship of felt and yarn face were deemed not to be expressed in the claims as they stood in the previous Appeal.

As this language was deemed by the Board not to be present in the claims prior to being amended, there is no basis for the Examiner to assert either that the addition of those words makes no difference or that the meaning of any portion of that phrase is precluded from proper construction.

The present invention has as a primary goal to simulate the effect of a combined facing fabric and felt such as encountered in prior art incontinent pads with stitchbonding that produces a yarn face that, in effect, behaves like a facing fabric with such felt. In other words, the yarn face, like a facing fabric, is sufficiently continuous that the felt is not so exposed that it would present either the rough or scratchy look or feel that is otherwise typically associated with such felts. While precision would be ideal, Appellants submit that it is sufficient that the phrase can be construed sufficiently to understand what it does not cover,<sup>5</sup> which here is a yarn face that has gaps through which the surface of the underlying substrate is readily visible on normal viewing or can be readily touched or in which the underlying substrate does not include felt. In this case, the prior art is deficient in that the underlying substrate is either not "felt" and/or the "yarn face" has gaps sufficient to allow the underlying substrate to be readily viewed or touched.

That the phrase in issue is written in relative terms is not dispositive. Indeed, the Federal Circuit has repeatedly held that relative terms are "commonly [and properly] used in patent claims 'to avoid a strict numerical boundary to the specified parameter.'" *Pall Corp. v. Micron Separations, Inc.*, 66 F.3d 1211, 1217, 36 USPQ2d 1225, 1229 (Fed. Cir. 1995); *See also*

---

<sup>5</sup> See, e.g., *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 48 USPQ2d 1117 (Fed. Cir. 1998) where it was not necessary to fully understand the meaning of "when" except to appreciate that it did not reach an occurrence that was at some appreciable time later.

*Andrew Corp v. Gabriel Elecs. Inc.*, 847 F.2d 819, 821-22, 6 USPQ 2010, 2013 (Fed. Cir. 1988) (noting that terms such as "approach each other," "close to," "substantially equal," and "closely approximate" are ubiquitously used in patent claims and that such usages, when serving reasonably to describe the claimed subject matter to those of skill in the field of the invention and to distinguish the claimed subject matter from the prior art, have been accepted in patent examination and upheld by the courts). Thus, that the claim phrase calls for the yarn face to be "effectively" continuous such that the felt surface is not "generally" exposed is nothing more than a recognition that any greater precision would be an unreasonable limitation on the rational reach of these claims. *See, e.g., N. Am. Container, Inc. v. Plastipak Packaging, Inc.*, 415 F.3d 1335, 75 USPQ2d 1545 (Fed. Cir. 2005), where the Court held that the addition of "generally" allowed for a more reasonable reading of the term "generally convex" as compared to the term "convex" standing alone. *See also Anchor Wall Sys. v. Rockwood Retaining Walls, Inc.*, 340 F.3d 1298, 67 USPQ2d 1865 (Fed. Cir. 2003) where the Court held that "generally parallel," expressly ties the adverb "generally" to the adjective "parallel" such that the ordinary meaning of the phrase "generally parallel" envisions some amount of deviation from exactly parallel.

Following that same rationale and in the environment to which the invention is directed and disclosed, Examiner's approach to the language used demands too much precision and gives too little weight to the context of those words, thus, undermining the premise for her rejections.

To that end, each of the claims specifically recite a plurality of stitch bonding yarns which extend through the felt to create at least one yarn face. That felt is not readily visible and/or not able to be easily touched, through that yarn face. In that way, a yarn face is created

that looks and feels like a soft yarn surface, rather than having the rough look and/or scratchy feel of a felt. The stitch bonding yarns are identified by reference number 18 in the Stern patent and include yarn segments 18' and 18" which extend over or across the upper surface 20 of the web and the lower surface 22 of the web, respectively. This arrangement is particularly shown in Figs. 2 and 5 of the Stern patent. The yarn segments contribute to form a top yarn face 24 and/or a bottom yarn face 26 of the finished fabric, which is described in the specification (taken from the Stern patent which is here being sought for reissue) as follows:

It will be appreciated that yarn segments 18' and 18" do not become embedded into the web 12 below surfaces 20 or 22 thereof, but rather extend across the surfaces 20 and 22, and are of sufficient density that yarn segments 18' cooperate to define a top yarn face 24 of fabric 10 above web upper surface 20, and yarn segments 18" cooperate to define a bottom yarn face 26 of fabric 10 below web lower surface 22. Faces 24 and 26 are effectively continuous such that web 12 is not exposed thereat, although small gaps or interstices (as at 28) between adjacent yarn segments 18' or 18" may allow viewing of felt surface 20 or 22 upon close inspection. It will be noted that Figs. 3 and 4 are greatly exaggerated to show interstices 28 in faces 24 and 26. [underlining added for emphasis] Col. 2, lines 52-65.

The Stern patent further clearly discloses that the yarns for providing the yarn faces of Applicants' stitch bonded fabric are "of a sufficient density" that the yarn segments 18', 18" cooperate to define, respectively, top and bottom yarn faces of fabric. *See* col. 2, lines 52-59. To provide these yarn faces of fabric, the Stern patent explains that the yarns 18 may be knitted in a flat stitch construction across the felt upper surface to form underlaps as at 30 in FIG. 3 and overlaps as at 32 in FIG. 4; these underlaps 30 and overlaps 32 are the result of the usual knit construction provided by stitch bonding, such as with existing Malipol-type machines as are known in the art. *See* col. 2, line 66 to col. 3, line 5. The resulting product includes an upper

and/or a lower "yarn face", such yarn face being defined as having very closely spaced or densely packed yarn segments of the stitch bonding yarns so as to be effectively continuous such that the felt is not generally exposed. As such, the fabric for the incontinent pad provides a comfortable surface (i.e., facing fabric) for the patient at the top yarn face and/or the bottom yarn face provides a surface, which may be used, for example, for adhesive connection to a barrier layer without interfering with either the structural rigidity or absorbency provided by the felt.

In view of the amount of detail contained in Appellants' specification, the expert Mr. Wright states:

Understandably, one of ordinary skill in the art is readily able to optimize the spacing between the rows of stitch bonded yarns, as based upon yarn density, for a particular application to provide the effectively continuous yarn face(s) of fabric, such stitched yarn face not allowing the felt web surface to be generally exposed upon close inspection. In other words, the felt, or felt web, cannot be readily seen, for example, through the top yarn face unless closely inspected using magnification and does not significantly protrude felt fibers against the patient's skin. Accordingly, "effectively continuous" means that the felt web surface is "not generally exposed," i.e. not readily viewable through the yarn face without magnification and not readily felt. Wright Decl., Paragraph 10.

Accordingly, the objective instruction provided in the specification, further in combination with the clarifying remarks of the expert Mr. Wright, prove that Appellants' additional claim terminology, which includes "effectively continuous" and "not generally exposed," is definite and provides a sufficient level of objectivity for one of ordinary skill in the art to determine the scope of the claimed invention. To that end, not only can one of ordinary skill in the art make that determination, one can also determine whether the references cited by Examiner disclose such a yarn face. As discussed in detail below, Appellants respectfully assert

that the yarn face and its interrelationship with the felt as recited in each of the rejected claims is a feature of the fabric or other product according to this invention that is not shown, disclosed, or otherwise suggested in the cited art.

**B. Examiner Refuses to Consider the Real Meaning of "Felt"**

Examiner has taken the position that a "felt web" includes "any nonwoven, web or batting comprising discontinuous or staple fibers." Appellants' position is that a "felt web" is a web of felt and that a felt is a matting material that has structural integrity in all directions, which is consistent with the general nature of incontinent pads prior to this invention. Examiner has not taken issue with Appellants' definition but instead refuses to even consider it. As Appellants' definition was presented to Examiner during prosecution, Examiner is unlawfully denying Appellants' due process by her refusal.

Examiner's position is premised on the weak reed that even though prosecution was not closed, Appellants cannot raise the issue because it was not raised in the previous appeal. That is not the law. In *Abbott Laboratories v. TorPharm Inc.*, 63 USPQ2d 1929, 1936 (Fed. Cir. 2002), the Court made clear that an unappealed decision of this Board is not binding on further prosecution such as in a continuation application. That holding was premised on the long-standing rule of law that a continuation application is to be reviewed on its merits, with all issues open for consideration notwithstanding a prior, adverse Board decision. Certainly, if an unappealed Board decision is not preclusive as to issues already decided, Appellants were entitled to full consideration of its position on the term "felt" when this case went back to the

Examiner pursuant to the RCE. That is all the more so as that issue was not previously considered by this Board.<sup>6</sup>

It is recognized that claims must be interpreted as broadly as their terms reasonably allow during examination. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). Without a clear definition in the specification, the words of the claims must be given their plain meaning, i.e. their ordinary and customary meaning, which is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application. *Phillips v. AWH Corp.*, 376 F.3d 1382, 75 USPQ2d 1321 (Fed. Cir. 2005) (*en banc*); *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003) (In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art).

The Stern patent discusses the invention in terms of incontinent pads and that the typical incontinent pad includes a felt layer. Such felt layers are generally recognized in the relevant art as requiring that it be a matted material with structural integrity in all directions because it was a web of material to which is going to be applied a separately formed facing fabric. Hence, the felt could not just be any sort of substrate "comprising discontinuous or staple

---

<sup>6</sup> Examiner makes much of the duration of this case, but the facts belie her concerns. The application was first filed in April 2000 and, after only two Official Actions, ended up on Appeal a short one and a half years later in September 2001. That Appeal was not decided until January 2005. Appellants presented their RCE and amended claims shortly thereafter in April 2005. The Examiner issued an Official Action on August 8, 2005, which was only the third action in this case. Appellants responded within the lawful time limits with arguments and evidence regarding this issue. As that Official Action was not final, Appellants were entitled to full consideration of the issues and should not have held against them that more than half the life of their application was consumed on Appeal.

"fibers" as Examiner contends. Mr. Wright confirms that "felt" is so understood by a person of ordinary skill in the art. Indeed, Mr. Wright explains that "Examiner has improperly defined Applicants' 'felt web' and has provided a grossly, overly broad interpretation ...[insofar as Applicants'] 'felt web' [is]...a nonwoven sheet of matted material...such matted material has structural integrity, i.e. tensile strength, in all directions." Wright Decl., Paragraph 12.

The Wright Decl. is irrefutable evidence that Examiner's definition is wrong and fails to consider the proper meaning of "felt" in the context of the invention as disclosed in the Stern patent. Had Examiner properly considered that context, she could not have ignored Mr. Wright's Declaration confirming the ordinary and customary meaning of "felt" in this art.<sup>7</sup>

### C. The Cited Art Neither Discloses nor Renders Obvious the Claimed Invention

#### 1. Overview

The claims presently stand rejected either as anticipated or for obviousness. For present purposes, focus will be on the independent claims, for if the rejections thereof fall, the rejections of the dependent claims necessarily must fall. *See, e.g., Harness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987) (dependent claims not obvious if independent claims not obvious over the art). Appellants do not, however, waive the right to present arguments directed specifically to the dependent claims should that become necessary.

---

(col. 2 lines 59-63)

<sup>7</sup> Mr. Wright is an expert in this area and sets out in detailed fashion the support for his conclusions. Examiner's mere incantation that she can ignore his Declaration as conclusory opinion is wrong as a matter of fact and deficient as a matter of law. Examiner provides no substantive evaluation of the evidence, no substantive explanation as to what she found unpersuasive, nor any reference to contrary evidence. General statements without explanation supporting such findings are insufficient. *See* MPEP §716.01 and, e.g., *In re Alton*, 76 F.3d 168, 37 USPQ2d 1578 (Fed. Cir. 1996).

Independent claim 65 stands rejected under §102(b) as being anticipated by Sternlieb; independent claims 30 and 51 stand rejected under §102(b) as being anticipated by Lefkowitz; independent claims 1, 12, 30, 51, 58, and 65 stand rejected under §102(b) as being anticipated by Ott; and independent claims 30, 39, 51, and 80 stand rejected under §102(b) as being anticipated by Gillies. With respect to the obviousness rejections, independent claims 1, 12, 23, and 70 are rejected under § 103(a) as being unpatentable over Gillies in view of Ott, and independent claims 1, 12, 23, 39, 51, 58, 65, 70 and 80 are rejected under § 103(a) as being unpatentable over Kyle in view of Gillies, Ott and/or Sternlieb. Various of the dependent claims stand rejected on the above art and/or citing further secondary references.

As it is submitted that the rejections of the independent claims cannot stand, the rejections of the dependent claims are also submitted to be in error and thus moot. Appellants do not, however, waive the right to present further or additional arguments as may later prove necessary. Rather, for present purposes, it is believed sufficient to establish that the cited art fails to disclose a stitch bonded yarn face which is "effectively continuous such that" the "felt" surface is "not generally exposed" as those terms are properly understood. All of the claims expressly require that combination which, as will be explained below, is not taught, suggested, or disclosed by the art as cited by Examiner.

## **2. The Cited Art Does Not Anticipate the Claimed Inventions**

It is well established that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). For the reasons listed below, each of Sternlieb, Lefkowitz, Gillies, and

Ott clearly fail to teach each and every element of Applicants' invention such that the §102 rejections cannot be sustained.

a. **Claim improperly rejected under 35 U.S.C. § 102(b) as anticipated by Sternlieb**

Independent Claim 65

Sternlieb is directed to a dimensionally stable fabric especially useful for bed sheets, or for the uppers of footgear such as sneakers, athletic shoes, etc. This dimensionally stable fabric includes a layer or web of carded fibers 1 reinforced by a woven fabric layer 9, such layer of carded fibers being unbonded, uncompacted, and unmatted and of intermingled, non-paralled fibers. *See Abstract; col. 1, lines 31-40; col. 2, lines 20-26.*

At the outset, the layer of web or carded fiber 1 is not felt. If that loose layer were attempted to be used as a felt in a prior art incontinent pad, there would be no way for one to effectively handle it in its own right or to reliably attach it to a facing fabric without the layer falling apart, either during handling, or perhaps even after attachment. Hence, it cannot be a felt as required by the claims. The expert agrees: "to one skilled in the art, these layers of unmatted carded fibers and of woven fabric are not felts." Wright Decl., Paragraph 13.

In addition, the two layers 1, 9 of the fabric are stitch bonded together by knitting yarns 11, 13. The stitches from knitting yarns 11, 13 in Fig. 7 of Sternlieb are shown spaced significantly from one another, and with portions of the layer as at 31 extending out from the stitchbonding yarns. It is undeniable that with such a construction, there are portions of a layer that are readily visible and easily touched. No matter what interpretation Examiner might want to give to the claims, such clearly exposed material means that yarn face of Sternlieb is not

"effectively continuous such that" the "felt" surface "is not generally exposed". The expert confirms that "it is abundantly clear to one skilled in the art that Sternlieb fails to teach, disclose or otherwise suggest any yarn face as recited in Applicants' claims." Wright Decl., Paragraph 11.

b. Claims improperly rejected under 35 U.S.C. § 102(b) as anticipated by Lefkowitz

Independent claims 30 and 51

Lefkowitz discloses a stitch knitted filter for high temperature fluids including a fibrous batt 2 of relatively brittle fibers with a number of stitch yarns 3, 4 significantly spaced from one another as shown particularly in Figs. 3 and 7 of that reference.

Lefkowitz concedes that the batt does not have structural integrity in its own right because it requires the combination of the batt and stitch yarns to "achieve . . . structural integrity". Col. 4, line 5. As Mr. Wright further explains, "to one skilled in the art, a batt of relatively brittle, unmatted fibers is not a felt." Wright Decl., Paragraph 13.

Additionally, as seen in all of the drawings of Lefkowitz, the stitching yarns are spaced well apart from one another. The batt material is quite readily seen and touched. Indeed, that must be so in order that the batt perform the filter function without being obstructed by the stitching yarns. The expert confirms that "if the stitch yarns [of Lefkowitz] produced an effectively continuous yarn face as claimed in Applicants' invention, then the filtered material is not able to escape the allegedly effectively continuous face. Therefore, the stitch yarns in Lefkowitz cannot be effectively continuous." Wright Decl., Paragraph 11.

c. **Claims improperly rejected under 35 U.S.C. § 102(b) as anticipated by Ott**  
**Independent claims 1, 12, 30, 51, 58, and 65**

The Ott patent is directed to a stitch bonded composite wiper 70 having strength and absorbency performance and other features for a variety of industrial, institutional and health care wiping uses. The stitch bonded composite wiper 70 includes a middle layer 78 of cellulose natural fibers and outer layers 76, 74 of continuous filament thermoplastic fibers, meltblown thermoplastic microfibers, or rayon fibers. *See Abstract; col. 2, lines 30-34; Fig. 2.*

Ott concedes that its middle layer 78 and outer layers 74, 76 are not felts. More specifically, those layers 74, 76, 78 are disclosed as being low cost alternatives to many nonwoven wipers, for example. *See col. 1, lines 23-29; and col. 2, lines 40-45.* In addition, such layers 74, 76 are formed via spunbonding methods while layer 78 is wet or dry formed, with neither layer resulting in a matted material. *See col. 2, line 64 to col. 3, line 4.* Furthermore, the absorbent middle layer of cellulose natural fibers fails to provide structural integrity in all directions, which would be required in order for it to be handled as a felt and to be attached to a facing fabric. The material of Ott would likely fall apart or into pieces were it to be handled and attached to a facing fabric. Hence, none of layers 74, 76, 78 can be a felt as they are neither nonwoven nor matted, with the absorbent middle layer clearly lacking structural integrity. In support thereof, the expert agrees that the "unmatted inner and outer layers are not felt to one skilled in the art." Wright Decl., Paragraph 13.

d. Claims improperly rejected under 35 U.S.C. § 102(b) as anticipated by

Gillies

Independent claims 30, 39, 51, and 80

Gillies discloses a reusable diaper including a median layer 14 of carded and crosslaid viscose rayon fibers having a cross-section of substantially rigid multi-limbed configuration. This median layer must be stitch bonded in order to be a cohesive unit and so that it can maintain dispersion and absorbency integrity. The stitch-bonded median layer is then hidden within the diaper by being incorporated between outer layers 12 and 16. *See Abstract; col. 5, lines 8 and 23-27; col. 5, line 64 to col. 6, line 13; Fig. 1.*

The median layer of Gillies is specifically formed from carded and crosslaid viscose rayon fibers. Unlike felt, which in its own right is a cohesive unit and has the structural integrity to retain fluid and withstand repeated usages, Gillies explains that their median layer material lacks those qualities. The Gillies median layer material must be stitch-bonded to be "maintained as a cohesive unit" (col. 5, line 8) and to achieve the required integrity (col 5., lines 23-27). The median layer of Gillies is thus not a matted material like a felt, and does not have the required structural integrity in its own right without the stitch bonding. Thus, the median layer of Gilles is not felt, which is confirmed by the expert: "to one skilled in the art, this median layer of carded and crosslaid viscose rayon fibers is not matted and, thus, not a felt." Wright Decl., Paragraph 13.

\* \* \* \*

For all of the above reasons, each of Sternlieb, Lefkowitz, Gillies, and Ott clearly fail to teach each and every element of Applicants' stitch bonded fabric face as recited in

independent claims 1, 12, 23, 30, 39, 51, 58, 65, 70, and 80, and their dependent claims. Hence, the anticipation rejections under Section 102 are in error and should be reversed.<sup>8</sup>

### **3. The Cited Art Does Not Render Obvious the Claimed Inventions**

The Section 103 rejections can be broken down into two groups. In the first group, the independent claims are rejected on the basis of Gillies in view of Ott. In the other group, the independent claims are rejected on the basis of Kyle in view of Gillies, Ott and/or Sternlieb. The dependent claims are rejected on the basis of the foregoing and/or with additional art, but it is submitted that the rejections of the independent claims are in error, thus mooting the rejections of the dependent claims.<sup>9</sup>

#### **a. Claims improperly rejected under 35 U.S.C. § 103(a) over Gillies in view of Ott**

##### Independent claims 1, 12, 23, 51, 58, 65, 70, and 80

As explained above, Gillies fails to reach the claimed invention as Gillies does not disclose a "felt". Similarly, Ott fails to reach the claimed invention for at least that same reason. Even were it obvious to have combined Gillies and Ott, Examiner cannot show that the result would include "felt". Hence, the obviousness rejections based on the combination of Gillies and Ott are flawed and should be reversed.

---

<sup>8</sup> Moreover, none of the art cited as anticipating any of the claims discloses an incontinent pad as required by claims 39-50 and 70-87 in any event.

<sup>9</sup> No independent claims are rejected over Taylor as a primary reference, and Taylor is relied upon only in rejection of dependent claims. Hence, Appellants do not see a need here to argue the details of Taylor, but it should be understood that such a view is without waiver of the right to present arguments later if necessary.

b. Claims improperly rejected under 35 U.S.C. § 103(a) over Kyles in view of Gillies, Ott and/or Sternlieb

Independent claims 1, 12, 23, 39, 51, 58, 65, 70, and 80

Turning now to the second group of obviousness rejections, they are all based on Kyle as the primary reference, with Gillies, Ott, and/or Sternlieb serving as the secondary references.

Kyle is an example of an incontinent pad of the prior art which has a facing fabric (upper sheet 25) which is either simply placed over, or can be quilted to, a felt (absorbent sheet 23 of needle-viscose rayon). While Examiner cites to Ott, Gillies, or Sternlieb for their stitch-bonding yarns, Examiner nowhere explains why it would have been obvious to modify Kyle to accommodate the stitch-bonding of these references. Indeed, absent hindsight reconstruction based on Appellants' present disclosure, it is submitted that there would have been no basis to modify Kyle in light of any of Ott, Gillies and/or Sternlieb. Nor would the result be the claimed invention in any event.

Turning first to Sternlieb, why would one throw away the facing fabric of Kyle in favor of the stitching yarns of Sternlieb. In Sternlieb, the stitching yarns are necessary to hold the loose layer together. The felt of Kyle is its own, stable layer, and does not need stitching yarns to hold it together. For that reason alone, Sternlieb does not provide support for Examiner's 103 rejections. In any event, even were Kyle to be modified to have the stitching of Sternlieb, the result would not be the claimed invention. As explained above in connection with the Section 102 rejections based on Sternlieb, the stitching there results in gaps through which the felt is

exposed, contrary to the claim requirement of a yarn face that "is essentially continuous" such that the surface of the felt "is not generally exposed".

Examiner's reliance on Gillies and Ott is equally flawed. As with Sternlieb, in Gillies, the stitching is required in order to maintain the median layer as a cohesive unit and to achieve the required integrity in order that the medial layer can be buried between outer layers of a diaper. As the felt of Kyle already suffices in its own right, why would one bother to modify that incontinent pad based on Gillies. Moreover, why would one be motivated to throw away the facing fabric of Kyle in favor of the Gillies stitch-bonding, when it would not appear to serve any purpose to do so. Examiner completely ignores the very purpose of stitch-bonding in Gillies, and instead randomly picks out of Gillies the stitch-bonded yarn face as if its mere existence would be sufficient to support an obviousness rejection. That is error as a matter of hornbook law.

Moreover, as explained by the expert:

Gillies' stitch bonded median layer, as already discussed above, is incorporated between outer layers 12 and 16, thereby effectively hiding within the diaper any yarn face presented on the surface of the median layer. In stark contrast, Applicants' stitch bonded fabric includes a stitch bonded yarn face on the outside of the product to provide a soft, comfortable surface for a patient. Clearly, it is nonsensical, certainly to one skilled in the art, to combine Gillies' stitch bonded median layer with any reference, let alone Kyle, to provide Applicants' stitch bonded fabric having a yarn face that is situated on the outside of the product. Wright Decl., Paragraph 16.

Nor is there reason or motivation to simply pick out the stitch-bonding of Ott in favor of the facing fabric of Kyle. Rather, like Gillies, the stitch-bonding of Ott is necessary to hold the material together. Since that is not at all a concern with Kyle, inasmuch as the felt is its own structurally integral web, there is no reason to take anything from Ott to motivate a change

to Kyle. Indeed, Ott is a wiper product and so is intended to present an abrasive surface, which is directly at odds with the nature of at least the top yarn face of the present invention. The expert confirmed that there is no motivation to combine "the wiper product of Ott with an incontinent pad, such as is disclosed in Kyle, in an effort to arrive at Applicants' fabric face product." Wright Decl., Paragraph 16.

\* \* \* \*

In view of the foregoing, it is respectfully submitted that the obviousness rejections are in error and should be reversed.

### Conclusion

For at least the reasons discussed above, Appellant respectfully submits that the rejections of claims 1-87 are in error and should be reversed.

Respectfully submitted,  
WOOD, HERRON & EVANS, L.L.P.

/kurt l grossman/  
Kurt L. Grossman Reg. No. 29,799

2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202  
(513) 241-2324 (voice)  
(513) 241-6234 (facsimile)

## VIII. CLAIMS APPENDIX

1. (Original - Once Amended) A stitch bonded facing fabric comprising:
  - a first layer of hydrophobic felt;
  - a second layer of hydrophilic felt being adjacent to the first layer so as to define a felt web having an upper surface defined by an upper side of the first layer and a lower surface defined by a lower side of the second layer; and
    - a plurality of stitch bonding yarns repeatedly extending through the felt web with yarn segments extending across both the upper and lower surfaces of the felt web such that the yarn segments extending across the felt web upper surface cooperate to form a top yarn face above the felt web upper surface and the yarn segments extending across the felt web lower surface cooperate to form a bottom yarn face below the felt web lower surface;  
wherein each yarn face is effectively continuous such that the corresponding web surface is not generally exposed at the associated yarn face.
2. (Original) The stitch bonded fabric of claim 1 further comprising a scrim layer interposed between one of the surfaces of the felt web and the yarn segments extending thereacross.
3. (Original) The facing fabric of claim 1 wherein the yarn segments extending across the felt web upper surface form underlaps.

4. (Original) The facing fabric of claim 3 wherein the yarn segments extending across the felt web lower surface form overlaps.
5. (Original) The facing fabric of claim 1 wherein the yarn segments extending across the felt web lower surface form overlaps.
6. (Original) The facing fabric of claim 1 wherein the yarns are stitched in a flat stitch construction across the felt web upper surface.
7. (Original) The facing fabric of claim 1 wherein the yarns are stitched in a loop knit construction across the felt web upper surface to define a plurality of yarn loops in the top yarn face.
8. (Original) The facing fabric of claim 1 wherein the yarns are hydrophobic.
9. (Original) The facing fabric of claim 1 wherein the yarns are hydrophilic.
10. (Original) The facing fabric of claim 1 wherein the yarns are continuous filaments.
11. (Original - Once Amended) The facing fabric of claim 1 wherein the yarns of each yarn face are not embedded into the associated surface of the web spun yarn.

12. (Original - Once Amended) A stitch bonded facing fabric comprising:  
a felt web having a hydrophobic upper aspect extending from an upper surface of the web and  
a hydrophilic lower aspect extending from a lower surface of the web; and  
a plurality of stitch bonding yarns repeatedly extending through the felt web with yarn  
segments extending across both the upper and lower surfaces of the felt web such that the yarn  
segments extending across the felt web upper surface cooperate to form a top yarn face above the felt  
web upper surface and the yarn segments extending across the felt web lower surface cooperate to  
form a bottom yarn face below the felt web lower surface;

wherein each yarn face is effectively continuous such that the corresponding web surface is  
not generally exposed at the associated yarn face.

13. (Original) The stitch bonded fabric of claim 12 further comprising a scrim layer interposed  
between one of the surfaces of the felt web and the yarn segments extending thereacross.

14. (Original) The facing fabric of claim 12 wherein the yarn segments extending across the felt web  
upper surface form underlaps.

15. (Original) The facing fabric of claim 14 wherein the yarn segments extending across the felt web lower surface form overlaps.

16. (Original) The facing fabric of claim 12 wherein the yarn segments extending across the felt web lower surface form overlaps.

17. (Original) The facing fabric of claim 12 wherein the yarns are stitched in a flat stitch construction across the felt web upper surface.

18. (Original) The facing fabric of claim 12 wherein the yarns are stitched in a loop knit construction across the felt web upper surface to define a plurality of yarn loops in the fabric top.

19. (Original) The facing fabric of claim 12 wherein the yarns are hydrophobic.

20. (Original) The facing fabric of claim 12 wherein the yarns are hydrophilic.

21. (Original) The facing fabric of claim 12 wherein the yarns are continuous filaments.

22. (Original - Once Amended)      The facing fabric of claim 12 wherein the yarns of each yarn face are not embedded into the associated surface of the web spun yarn.

23. (Original - Once Amended) A fluid-retaining fabric comprising:

a stitch bonded facing fabric having a first layer of hydrophobic felt, a second layer of hydrophilic felt being adjacent to the first layer so as to define a felt web having an upper surface defined by an upper side of the first layer and a lower surface defined by a lower side of the second layer, and a plurality of stitch bonding yarns repeatedly extending through the felt web with yarn segments extending across both the upper and lower surfaces of the felt web such that the yarn segments extending across the felt web upper surface cooperate to form a top yarn face above the felt web upper surface and the yarn segments extending across the felt web lower surface cooperate to form a bottom yarn face below the felt web lower surface;

wherein each yarn face is effectively continuous such that the corresponding web surface is not generally exposed at the associated yarn face; and

a barrier layer attached to the bottom yarn face.

24. (Original) The fluid-retaining fabric of claim 23 further comprising adhesive attaching the barrier layer to the bottom yarn face.

25. (Original) The fluid-retaining fabric of claim 23 wherein the first and second felt layers are needle punched into a single felt web.

26. (Original) The fluid-retaining fabric of claim 23 wherein the barrier layer includes a fluid barrier ply and a fabric ply.

27. (Original) The fluid-retaining fabric of claim 26 wherein the barrier ply is attached to the bottom yarn face.

28. (Original) The fluid-retaining fabric of claim 23 wherein the barrier layer includes a fluid barrier ply.

29. (Original) The fluid-retaining fabric of claim 23 further comprising edge stitching attaching the barrier layer to the bottom yarn face.

30. (New – Once Amended) A stitch bonded facing fabric comprising:

a felt web having an upper surface and a lower surface; and

a plurality of stitch bonding yarns repeatedly extending through the felt web with yarn segments extending across both the upper and lower surfaces of the felt web such that the yarn segments extending across the felt web upper surface cooperate to form a top yarn face above the felt web upper surface and the yarn segments extending across the felt web lower surface cooperate to form a bottom yarn face below the felt web lower surface;

wherein each yarn face is effectively continuous such that the corresponding web surface is not generally exposed at the associated yarn face.

31. (New) The stitch bonded facing fabric of claim 30 further comprising a scrim layer interposed between one of the surfaces of the felt web and the yarn segments extending thereacross.

32. (New)     The stitch bonded facing fabric of claim 30 wherein the yarn segments extending across the felt web upper surface form underlaps.
33. (New)     The stitch bonded facing fabric of claim 32 wherein the yarn segments extending across the felt web lower surface form overlaps.
34. (New)     The stitch bonded facing fabric of claim 30 wherein the yarn segments extending across the felt web lower surface form overlaps.
35. (New)     The stitch bonded facing fabric of claim 30 wherein the yarns are stitched in a flat stitch construction across the felt web upper surface.
36. (New)     The stitch bonded facing fabric of claim 30 wherein the yarns are stitched in a loop knit construction across the felt web upper surface to define a plurality of yarn loops in the fabric top.
37. (New)     The stitch bonded facing fabric of claim 30, the felt web including first and second felt layers being adjacent to one another to define the felt web, the upper surface of the web being defined by an upper side of the first felt layer, the lower surface of the web being defined by a lower side of the second felt layer, the stitch bonded yarns extending through both felt layers.
38. (New)     The stitch bonded facing fabric of claim 30 wherein the yarns are hydrophilic.

39. (New – Once Amended) An incontinent pad comprising:

a stitch bonded facing fabric having a felt web having an upper surface and a lower surface  
and a plurality of stitch bonding yarns repeatedly extending through the felt web with yarn segments  
extending across both the upper and lower surfaces of the felt web such that the yarn segments  
extending across the felt web upper surface cooperate to form a top yarn face above the felt web  
upper surface and the yarn segments extending across the felt web lower surface cooperate to form a  
bottom yarn face below the felt web lower surface;

wherein each yarn face is effectively continuous such that the corresponding web surface is  
not generally exposed at the associated yarn face; and

a barrier layer joined to the facing fabric so as to confront the bottom yarn face of the facing  
fabric.

40. (New) The incontinent pad of claim 39 further comprising adhesive attaching the barrier  
layer to the bottom yarn face.

41. (New) The incontinent pad of claim 39 further comprising edge stitching attaching the  
barrier layer to the bottom yarn face.

42. (New) The incontinent pad of claim 39 wherein the barrier layer includes a fluid barrier ply  
and a fabric ply.

43. (New)     The incontinent pad of claim 39, the felt web of the stitch bonded facing fabric including first and second felt layers being adjacent to one another to define the felt web, the upper surface of the web being defined by an upper side of the first felt layer, the lower surface of the web being defined by a lower side of the second felt layer, the stitch bonded yarns extending through both felt layers.

44. (New)     The incontinent pad stitch of claim 39 further comprising a scrim layer in the stitch bonded facing fabric and being interposed between one of the surfaces of the felt web and the yarn segments extending thereacross.

45. (New)     The incontinent pad of claim 44, the scrim layer being interposed between the felt web lower surface and the yarn segments extending thereacross.

46. (New)     The incontinent pad of claim 39 wherein the yarn segments extending across the felt web upper surface of the stitch bonded facing fabric form underlaps.

47. (New)     The incontinent pad of claim 39 wherein the yarn segments extending across the felt web lower surface of the stitch bonded facing fabric form overlaps.

48. (New)     The incontinent pad of claim 39 wherein the yarns of the stitch bonded facing fabric are stitched in a flat stitch construction across the felt web upper surface.

49. (New) The incontinent pad of claim 39 wherein the yarns of the stitch bonded facing fabric are stitched in a loop knit construction across the felt web upper surface to define a plurality of yarn loops in the fabric top.

50. (New) The incontinent pad of claim 39 wherein the yarns of the stitch bonded facing fabric are hydrophobic.

51. (New - Once Amended) A fluid retaining fabric comprising:

a felt web having an upper surface and a lower surface, the felt being adapted to retain fluid therein; and

a plurality of stitch bonding yarns repeatedly extending through the felt web with yarn segments extending across both the upper and lower surfaces of the felt web such that the yarn segments extending across the felt web upper surface cooperate to form a top yarn face above the felt web upper surface and the yarn segments extending across the felt web lower surface cooperate to form a bottom yarn face below the felt web lower surface, the stitch bonding yarns being hydrophobic whereby to assist in wicking fluid into the felt web;

wherein each yarn face is effectively continuous such that the corresponding web surface is not generally exposed at the associated yarn face.

52. (New) The fluid retaining fabric of claim 51 further comprising a scrim layer interposed between one of the surfaces of the felt web and the yarn segments extending thereacross.

53. (New)      The fluid retaining fabric of claim 51 wherein the yarn segments extending across the felt web upper surface form underlaps.

54. (New)      The fluid retaining fabric of claim 51 wherein the yarn segments extending across the felt web lower surface form overlaps.

55. (New)      The fluid retaining fabric of claim 51 wherein the yarns are stitched in a flat stitch construction across the felt web upper surface.

56. (New)      The fluid retaining fabric of claim 51 wherein the yarns are stitched in a loop knit construction across the felt web upper surface to define a plurality of yarn loops in the fabric top.

57. (New)      The fluid retaining fabric of claim 51 wherein the yarns are continuous filaments.

58. (New – Once Amended)    A stitch bonded facing fabric comprising:  
a first layer of felt having hydrophobic properties and further having an outer surface; and  
a plurality of stitch bonding yarns repeatedly extending through the first layer of felt with yarn  
segments extending across the outer surface of the layer of felt, such that the yarn segments  
extending across the felt layer outer surface cooperate to form a yarn face above the felt layer outer  
surface;

wherein the yarn face is effectively continuous such that the outer surface of the layer of felt  
is not generally exposed at the yarn face.

59. (New)     The stitch bonded facing fabric of claim 58 further comprising a second layer of felt adjacent the first layer and having the stitch bonding yarns repeatedly extending therethrough.

60. (New)     The stitch bonded facing fabric of claim 58 further comprising a scrim layer interposed between the felt layer outer surface and the yarn segments extending thereacross.

61. (New)     The stitch bonded facing fabric of claim 58 wherein the yarn segments extending across the felt web outer surface form underlaps.

62. (New)     The stitch bonded facing fabric of claim 58 wherein the yarns are stitched in a flat stitch construction across the felt web outer surface.

63. (New)     The stitch bonded facing fabric of claim 58 wherein the yarns are stitched in a loop knit construction across the felt web outer surface to define a plurality of yarn loops.

64. (New)     The stitch bonded facing fabric of claim 58 wherein the yarns are hydrophobic.

65. (New – Once Amended)     A stitch bonded facing fabric comprising:  
                                  a first layer of felt having hydrophilic properties and further having an outer surface; and  
                                  a plurality of stitch bonding yarns repeatedly extending through the first layer of felt with yarn  
                                  segments extending across the outer surface of the layer of felt, such that the yarn segments

extending across the felt layer outer surface cooperate to form a yarn face above the felt layer outer surface;

wherein the yarn face is effectively continuous such that the outer surface of the layer of felt is not generally exposed at the yarn face.

66. (New) The stitch bonded facing fabric of claim 65 further comprising a second layer of felt adjacent the first layer and having the stitch bonding yarns repeatedly extending therethrough.

67. (New) The stitch bonded facing fabric of claim 65 further comprising a scrim layer interposed between the felt layer outer surface and the yarn segments extending thereacross.

68. (New) The stitch bonded facing fabric of claim 65 wherein the yarn segments extending across the felt web outer surface form overlaps.

69. (New) The stitch bonded facing fabric of claim 65 wherein the yarns are hydrophobic.

70. (New – Once Amended) An incontinent pad comprising:  
a facing fabric including a first layer of felt having hydrophobic properties and further having an outer surface, and a plurality of stitch bonding yarns repeatedly extending though the first layer of felt with yarn segments extending across the outer surface of the layer of felt, such that the yarn segments extending across the felt layer outer surface cooperate to form a yarn face above the felt layer outer surface;

wherein the yarn face is effectively continuous such that the outer surface of the felt layer is not generally exposed at the yarn face; and  
a barrier layer joined to the facing fabric.

71. (New)     The incontinent pad of claim 70, the facing fabric further including a second layer of felt adjacent the first layer and having the stitch bonding yarns repeatedly extending therethrough.

72. (New)     The incontinent pad of claim 70 further comprising adhesive attaching the barrier layer to the facing fabric.

73. (New)     The fluid-retaining fabric of claim 70 further comprising edge stitching attaching the barrier layer to the facing fabric.

74. (New)     The incontinent pad of claim 70 wherein the barrier layer includes a fluid barrier ply and a fabric ply.

75. (New)     The incontinent pad stitch of claim 70 further comprising a scrim layer in the facing fabric and being interposed between the felt web outer layer and the yarn segments extending thereacross.

76. (New)     The incontinent pad of claim 70 wherein the yarn segments extending across the felt web outer surface of the facing fabric form underlaps.

77. (New) The incontinent pad of claim 70 wherein the yarns of the facing fabric are stitched in a flat stitch construction across the felt web outer surface.

78. (New) The incontinent pad of claim 70 wherein the yarns of the facing fabric are stitched in a loop knit construction across the felt web outer surface to define a plurality of yarn loops.

79. (New) The incontinent pad of claim 70 wherein the yarns of the facing fabric are hydrophobic.

80. (New – Once Amended) An incontinent pad comprising:

a facing fabric including a first layer of felt having hydrophilic properties and further having an outer surface, and a plurality of stitch bonding yarns repeatedly extending through the first layer of felt with yarn segments extending across the outer surface of the layer of felt, such that the yarn segments extending across the felt layer outer surface cooperate to form a yarn face above the felt layer outer surface;

wherein each yarn face is effectively continuous such that the outer surface of the layer of felt is not generally exposed at the yarn face; and  
a barrier layer joined to the facing fabric.

81. (New) The incontinent pad of claim 80, the facing fabric further including a second layer of felt adjacent the first layer and having the stitch bonding yarns repeatedly extending therethrough.

82. (New)     The incontinent pad of claim 80 further comprising adhesive attaching the barrier layer to the facing fabric

83. (New)     The fluid-retaining fabric of claim 80 further comprising edge stitching attaching the barrier layer to the facing fabric.

84. (New)     The incontinent pad of claim 80 wherein the barrier layer includes a fluid barrier ply and a fabric ply.

85. (New)     The incontinent pad stitch of claim 80 further comprising a scrim layer in the facing fabric and being interposed between the felt web outer layer and the yarn segments extending thereacross.

86. (New)     The incontinent pad of claim 80 wherein the yarn segments extending across the felt web outer surface of the facing fabric form overlaps.

87. (New)     The incontinent pad of claim 80 wherin the yarns of the facing fabric are hydrophobic.

## **IX. EVIDENCE APPENDIX**

Exhibit A – Declaration of E. Linwood Wright Pursuant to 37 C.F.R. §1.132 filed on February 6, 2006.

Exhibit B – Supplemental Declaration of E. Linwood Wright Pursuant to 37 C.F.R. §1.132 filed on February 24, 2006.

Examiner previously considered these declarations in the Final Office Action mailed on May 2, 2006.

**X. RELATED PROCEEDINGS APPENDIX**

Exhibit C – Decision on Appeal mailed January 19, 2005 (Appeal No. 2005-0019).

Exhibit D – Response to Request for Rehearing mailed on March 25, 2005 (Appeal No. 2005-0019).

---